

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
W.R. Grace & Co., <u>et al.</u> ,)	Case No. 01-01139 (KJC)
)	(Jointly Administered)
)	
Debtors.)	Re: D.I. 31718 and 31846

**[PROPOSED] ORDER APPOINTING RULE 706 EXPERT
REGARDING LUKINS & ANNIS FEE ALLOCATION CLAIM**

WHEREAS ZAI Class Counsel have applied for and received a common fund contingency fee award from the ZAI settlement fund proceeds;

WHEREAS ZAI Class Counsel have reached agreement allocating fees among themselves and with two associated firms that remained involved in the ZAI litigation throughout this bankruptcy;

WHEREAS the law firm of Lukins & Annis claims an interest in the common fund fee and intends to make a motion supporting its claim; and further, has made a claim for recovery of costs, to be paid from the ZAI Trust;

WHEREAS the claim of Lukins & Annis is the only remaining issue regarding the ZAI fee; and whereas Lukins & Annis claim for recovery of costs is in dispute;

WHEREAS ZAI Class Counsel have requested the appointment of a Fed. R. Evid. 706 Expert on the terms and conditions set forth in this Order.

NOW, THEREFORE, based upon the record in these proceedings and after due deliberation, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby appoints the Honorable Judith K. Fitzgerald as a Rule 706 Expert, (“The Expert”). The Expert shall issue a report and recommendation, (the “Report”), with respect to the Lukins & Annis

motion for fees and costs. All parties have waived the requirements of Fed. R. Evid. 706 (b)(2), (3) and (4) regarding cross examination or testimony by the Expert.

2. Without waiving their respective legal positions, Class Counsel and Lukins & Annis shall exchange time records within five (5) days of the entry of this Order;
3. Within ten (10) days of the exchange set forth in Paragraph 2, Lukins & Annis shall file with the Court its motion and accompanying documentation supporting its claim to an allocation of the ZAI class action common fund fee and costs;
4. Within ten (10) days of the receipt of Lukins & Annis' motion, any party wishing to respond to the Lukins & Annis motion shall file with the Court their response and accompanying documentation;
5. Within seven (7) days after receiving the response(s) referred to in Paragraph 4, Lukins & Annis may file its reply, if any, with the Court;
6. Within thirty (30) days of the submission of any reply by Lukins & Annis referred to in Paragraph 5, the Expert shall deliver a copy of her report to the parties and to the Court;
7. Within ten (10) days of the delivery of the report to the Court, any party may file a response to the report.
8. The Court will thereafter issue an Order on the Lukins & Annis motion for fees and costs; and

9. The parties shall be responsible for payment of the Expert's fees and expenses in the following proportions: (a) 50% to Class Counsel and, (b) 50% to Lukins & Annis.

Dated: _____
Wilmington, Delaware

Hon. Kevin J. Carey
United States Bankruptcy Judge